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**IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA**

JAMES ESTAKHRIAN and ABDI
NAZIRI, on behalf of themselves and
all others similarly situated,

Plaintiffs,

v.

MARK OBENSTINE, BENJAMIN F.
EASTERLIN IV, TERRY A.
COFFING, KING & SPALDING, LLP
and MARQUIS & AURBACH, P.C.,

Defendants.

Case No. 2:11-cv-3480-FMO-CW

CLASS ACTION

**PLAINTIFFS' REPLY IN SUPPORT
OF CONTEMPT ORDERS**

Before: Hon. Fernando M. Olguin

1 **I. Obenstine Is In Contempt**

2 Defendant Mark Obenstine's Opposition to Plaintiffs' Order to Show Cause
3 belatedly disputes the Court's authority to hold him in contempt for violating the
4 Property Injunction and for engaging in collection activities violative of the
5 Amended Judgment. The Opposition is meritless. The Court should issue
6 Plaintiffs' proposed contempt order and the requested order to show cause.

7 As a threshold matter, it is far too late for Obenstine to contest the Court's
8 contempt finding for his violations of the Property Injunction. The Court's Order
9 of January 13, 2020 directed Obenstine to file any opposition to Plaintiffs'
10 Application for an Order to Show Cause by January 21, 2020 and to appear in
11 person at the February 6, 2020 hearing. (Dkt. 647). Obenstine did not do either.

12 In its Order of February 7, 2020, the Court ordered Obenstine to appear in
13 person before the Court on February 27, 2020 and show cause why he should not
14 be held in contempt for violating the Property Injunction. (Dkt. 653). Obenstine
15 once again failed to comply and the Court found him in contempt.

16 At this point, Obenstine has waived any opposition to this contempt finding.
17 *See* Fed. R. Civ. P. 6(b)(1)(B) (after expiration of deadline, a motion for
18 enlargement of time is required showing excusable neglect); C.D. Cal. L.R. 7-12;
19 *Kyle v. Campbell Soup Co.*, 28 F.3d 928, 932 (9th Cir. 1994), *as amended on*
20 *denial of reh'g* (Apr. 8, 1994) (finding abuse of discretion where district court
21 considered a motion filed two days late absent excusable neglect when the deadline
22 was governed by a nonambiguous rule).

23 Similarly, Obenstine cannot, at this late stage, dispute the contents of the
24 Amended Judgment entered on July 8, 2019 (Dkt. 638). *See Nguyen v. Regents of*
25 *Univ. of Cal.*, No. 1700423, 2019 WL 3017678, at *5 (C.D. Cal. Mar. 25, 2019)
26 (denying plaintiff's motion to reconsider in part because plaintiff failed to timely
27 raise arguments in opposition to defendants' motion and thereby waived his right
28 to assert them in a later motion for relief from judgment); *United States v. 385.93*

1 *Acres of Land, Situated in City of Portsmouth & Town of Newington, Rockingham*
2 *Cty., N.H.*, 16 F.R.D. 557, 558 (D.N.H. 1954) (finding “[Rule 6 and Rule 59] are
3 supportive of the longstanding policy that objections to judgments must be
4 promptly asserted, to ensure finality of judgments”); Fed. R. Civ. P. 6(b) advisory
5 committee’s note to 1946 amendment (the Rule 6(b) bar on extension of time for
6 Rule 59 filings “is based on the view that there should be a definite point where it
7 can be said a judgment is final.”).

8 In view of Obenstine’s concession that he has engaged in collection
9 activities against class members the Court should also issue the order to show
10 cause. Although Obenstine is obligated to pay class members \$12 million under the
11 Amended Judgment, he is attempting to collect money from them without
12 disclosing the existence of the judgment or his debt to class members. According
13 to Obenstine, he “has a constitutional right to contact his former clients and pursue
14 an action against them.” (Dkt. 662 at 6).

15 The fatal flaw in Obenstine’s position is that it is premised on the notion that
16 Obenstine can proceed as if the Amended Judgment did not exist. In doing so,
17 Obenstine is acting in defiance of the Amended Judgment. The Court can and
18 should issue the requested order to show cause to address Obenstine’s contempt.

19 **II. Further Proceedings**

20 In light of the growing coronavirus crisis, Plaintiffs respectfully request that
21 the Court schedule any further hearings in this matter for mid-May or later.

22 Dated: March 9, 2020

Respectfully submitted,

23 IRVINE LAW GROUP LLP

24 MEHRI & SKALET PLLC

25 FAY LAW GROUP PLLC

26 KEMNITZER BARRON & KRIEG LLP

27 By: /s/ Mark A. Chavez

28 Mark A. Chavez

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